

Penalties can only be abated by the Director on recommendation from the Board of Appeals. (This is a GIL.)

September 1, 1999

Dear Mr. Xxxxx:

This letter is in response to your recent letter to PERSON. At the direction of the Director of Revenue we have investigated your situation and the comments you made in your letter.

The Illinois Department of Revenue conducted a sales tax audit for your business, the BUSINESS, for the period of January, 1983 through December, 1995. During the audit timeframe BUSINESS conducted a pre-school day care operation. The business was organized as a corporation and operated on a for-profit basis. The Department's auditor established liability on untaxed purchases of tangible personal property made by the business during the audit period. Many of these purchases were food items. At the completion of the audit, you paid a portion of the tax and the Department issued Assessments #### and ####.

Your letter states that the Department did not assist you in establishing the proper statutory exemption. You also state the Department did not include you in its "amnesty plan." After checking Department records in this matter, we are unable to conclude that BUSINESS was entitled to any statutory exemption. Specifically, we do not think that BUSINESS qualified as an exclusively charitable or educational organization.

In order to qualify as exclusively charitable, an organization must be non-profit and organized and operated exclusively for charitable purposes by dispensing charity in a manner that relieves the public of a burden. BUSINESS does not meet these requirements. In addition, the fact that BUSINESS is a for-profit business, in and of itself, requires the conclusion that it is not an exclusively charitable organization.

We also cannot conclude that BUSINESS qualifies for exemption on the basis of being organized exclusively for educational purposes. Section 2h of the Retailers' Occupational Tax Act (35 ILCS 120/2h) specifically defines entities eligible to receive an exemption as an educational organization as follows:

"For purposes of this Act, a corporation, limited liability company, society, association, foundation or institution organized and operated exclusively for educational purposes shall include: all tax-supported public schools; private schools which offer systematic instruction in useful branches of learning by methods common to public schools and which compare favorably in their scope and intensity with the course of study presented in tax-supported schools; licensed day care centers as defined in Section 2.09 of the Child Care Act of 1969 which are operated by a not for

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profit corporation, society, association, foundation, institution or organization; vocational or technical schools or institutes organized and operated exclusively to provide a course of study of not less than 6 weeks duration and designed to prepare individuals to follow a trade or to pursue a manual, technical, mechanical, industrial, business or commercial occupation.

However, a corporation, limited liability company, society, association, foundation or institution organized and operated for the purpose of offering professional, trade or business seminars of short duration, self-improvement or personality development courses, courses which are avocational or recreational in nature, courses pursued entirely by open circuit television or radio, correspondence courses, or courses which do not provide specialized training within a specific vocational or technical field shall not be considered to be organized and operated exclusively for educational purposes."

While we acknowledge that BUSINESS engages in some day care activities, it does not meet the statutory definition. Because pre-school activities are not offered as courses of study in the public schools, BUSINESS does not offer instruction by methods that compare favorably in scope and intensity with courses of study presented in the public schools. BUSINESS is clearly not a vocational or technical school. Although BUSINESS is a day care facility, it is not licensed by the State of Illinois. Again, the fact that BUSINESS is a for-profit operation means that it cannot meet the statutory definition of "licensed day care centers . . . operated by a not for profit corporation . . . or organization."

As BUSINESS has not qualified for exemption since its commencement of operations in 1983, it has incurred a tax liability on its untaxed purchases of tangible personal property for use or consumption or for transfer as an incident of its day care services. Therefore it was correct and proper for the auditor to assess tax liability against BUSINESS on purchases made without the vendor collecting Illinois tax. Our review shows that most of the liability on purchases of food resulted from transactions where BUSINESS purchased the items from unregistered out-of-State suppliers. To the extent that BUSINESS is still making purchases from vendors who are not collecting Illinois tax, you should self-assess the tax and pay it directly to the Illinois Department of Revenue.

Because you were liable for the tax, statutory penalties and interest were also incurred. We understand you have now paid all the tax and are interested in obtaining an abatement of the penalty and interest. Please be advised that subject to the following exception, no one, including any employee of the Illinois Department of Revenue, is authorized to cancel or compromise a debt such as yours that is due to this State. The only exception is the Director of Revenue based upon a recommendation of the board of appeals. See 20 ILCS 2505/39b20 and 39c. We understand you have filed petitions with the Board three times for this purpose and they have made determinations to not grant your requested relief.

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Regarding your statement about the Department's "amnesty plan," we believe you are actually referring to the voluntary disclosure program for businesses that have not filed tax returns. According to governing regulations, this program is only available to taxpayers who voluntarily come forward and disclose (86 Ill. Adm. Code 210.126(b)), and a taxpayer cannot qualify if the Department has already initiated an audit or investigation of the business (86 Ill. Adm. Code 210.126(c)). The fact that you were under audit precluded your participation in the voluntary disclosure program.

Based upon the Board's denial of relief, we must consider this matter closed and conclude that you are liable for the remaining penalty and interest.

Very truly yours,

Karl W. Betz
Associate Counsel

KWB